A.F.R

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
(DIVISION BENCH)

CORAM : HON'BLE SHRI S.R. NAYAK, CJ &
HON'BLE SHRI V.K. SHRIVASTAVA, J.

MISC. APPEAL (C) NO. 482 OF 2006

Appellant : Claimant — Rajeev Bhushan Agnihotri, S/o Shri Krishnanand Agnihotri, Aged about 48 years, R/o Qr. No.16, Jalashay Marg, Choubey Colony, Raipur, Tahsil and District Raipur (CG).

Versus

Respondents :

1. Amool Samre, S/o Laxmikant Samre, R/o Civil Line Chandrapur, Dist. Chandrapur (Maharashtra).

   OWNER

2. National Insurance Company Ltd., Division No.10, Flat No.101-106, N-1, B.M.C. House Kanat Place, New Delhi 110 001.

3. The Manager, Rayal Sundram Allayance Insurance Comp. Ltd. First Floor Yawla Complex in front of U.T.I. Bank near Bus Stand Pandry Raipur, District Raipur (C.G.).

Present :- Shri Jitendra Gupta, learned counsel for the appellant.

None for the respondents.

(ORAL ORDER)
(Passed on 20th December, 2006)

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J.**

The Motor Accident Claims Tribunal, Rajnandgaon (henceforth 'the Tribunal'), vide award dated 21-09-2006 passed in M.A.C.T. Case

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No.73 of 2006 awarded a compensation of Rs.4,17,500/- in favour of the appellant.

2) On 11-09-2004 appellant accompanied by his friend Satyajit Pathak was going to Nagpur in a car bearing registration No.CG-05A/8500. Appellant was license holder and he was driving the vehicle. When they reached near Khair Bana turning, the vehicle bearing registration No. MH-34K/2876 coming from opposite direction, driven in a rash and negligent manner collided with the appellant's vehicle. Appellant's vehicle turned turtle and jammed in a culvert. Appellant received injuries on his right leg, knee, thigh and also on left hand in between elbow and shoulder. He also received injuries on head and chest. He was taken to the Government Hospital, Rajnandgaon, where after first aid he was referred to J.L.N. Hospital and Research Centre, Bhilai.

3) He was admitted in J.L.N. Hospital and Research Centre, Bhilai, for treatment and was discharged on 15-09-2004. Appellant for further treatment hired chartered plane and went to Delhi and got treatment in Sir Ganga Ram Hospital, Delhi. Thereafter he came back to Raipur and continued treatment in Khemka Hospital, Raipur. He calculated a total compensation of Rs.16,18,120/- on various heads and instituted his claim application under Section 166 of the Motor Vehicles Act, 1988 (henceforth 'the Act, 1988') against the owner of the vehicle responsible for the accident and its Insurer as well as the Insurer of the vehicle used by the appellant. Owner of the vehicle, which caused the accident, respondent No.1, remained *ex parte*. Both the Insurance Companies contested the claim of the appellant.

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4) Appellant in support of his claim adduced oral as well as documentary evidence. Learned Tribunal considered the evidence and awarded the claim as below :

S.No.	Head	Amount
1.	Medical Expenses	2,87,500=00
2.	Loss of Income	30,000=00
3.	20% Permanent Disability in one leg and one hand	50,000=00
4.	Travelling Expenses.	25,000=00
5.	Physical and Mental Sufferings	15,000=00
6.	Special Diet and Attendant	10,000=00
	T o t a l :	**4,17,500=00**

5) Learned counsel for the appellant contended that the Tribunal allowed Rs.2,69,170/- towards medical expenses, whereas Rs.2,87,500/- was proved. This is an incorrect statement. From the award, it is evident that the Tribunal holding medical expenses to the tune of Rs.2,87,500/- proved, allowed the said amount. Tribunal disallowed Rs.13,650/-, that was claimed against Ex.P/52 on the ground that the item mentioned in Ex.P/52 has not been certified to be used by the patient. We have perused Ex.P/48 and Ex.P/52. Vide Ex.P/48 one set of Depuy, UK, ACE (Tit.) Tibial Interlocking Nail System has been purchased and the hospital when applied that set in patient has endorsed a certificate in the bill whereas the same kit for Femoral Interlocking Nail System has been purchased, but was not certified to be applied in patient by the institution and there is no other evidence also to support that those items have been applied in patient, therefore, appellant was not entitled to claim the amount of Rs.13,650/- and learned Tribunal very correctly disallowed Rs.13,650/-, claimed against Ex.P/52.

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6) Learned counsel for the appellant further contended that for awarding loss of income the Tribunal did not consider his annual income Rs.1,00,000/-, and incorrectly allowed Rs.30,000/- holding the appellant's income as Rs.64,000/- per annum. Appellant himself has filed his income tax return i.e. Ex.P/95 and has shown his annual income as Rs.64,186/-. Tribunal on appellant's assessment accepted his income as Rs.64,000/- per annum and granted Rs.30,000/- towards loss of earnings, though it was not proved that the appellant was unable to work for any substantial period. From document (Ex.P/69) it appears that he was admitted in J.L.N. Hospital and Research Centre, Bhilai from 11-09-2004 to 15-09-2004. There is no document to establish how many days he remained in Sir Ganga Ram Hospital, Delhi. Even otherwise, according to his own statement he was admitted in Sir Ganga Ram Hospital for 15 days. At the most loss of income for 20 days was admissible to the appellant, but loss of six months, earnings have been allowed by the Tribunal.

7) Learned counsel for the appellant urged that appellant hired a chartered aircraft and went to Delhi for treatment and incurred expenditure of Rs.4,70,000/- towards air travel, but learned Tribunal only allowed Rs.25,000/-. Appellant was not referred for treatment by J.L.N. Hospital and Research Centre, Bhilai. He himself got discharged and went to Delhi. Medical Officer of J.L.N. Hospital and Research Centre, Bhilai was not examined to establish that there was emergency to shift the patient to Delhi or even to say that patient was in need of advance treatment at other centre. Regular flight/train services are available for Delhi, but leaving aside both the services appellant chose to hire a chartered aircraft to meet luxury and luxurious claims are not part and partial of accident

award. Even though learned Tribunal showing leniency allowed a sum of Rs.25,000/- towards air travel.

8) Learned counsel for the appellant further contended that the Tribunal did not allow compensation for loss of future earning. Learned Tribunal considered all the aspects of the case and hold that there is no possibility of future loss of income, therefore, did not allow any additional sum towards loss of future income. We are unable to disagree with the finding of the Tribunal, who after due consideration has disallowed future loss of income looking to nature of the work. The injuries caused to the appellant are not sufficient to impair functional competency of the appellant, even otherwise learned Tribunal not only has allowed Rs.30,000/- towards loss of income that is for six months earning, but further allowed Rs.15,000/- towards his disability.

9) Towards mental & physical suffering, attendant and special diet total amount allowed by the Tribunal is Rs.25,000/-, that cannot be said to be unjust or insufficient.

10) In the instant case, neither Medical Officer of J.L.N. Hospital and Research Centre, Bhilai, who examined and treated the appellant, nor any one from Sir Ganga Ram Hospital, Delhi, who treated the appellant has been examined. Dr. A.A. Saifi (AW-1), who was adduced by the appellant, had examined the appellant on 17-08-2005 i.e. after lapse of 9 (nine) months for issuing a disability certificate. He assessed 20% disability in appellant's right leg and left shoulder. Neither there is any medical evidence to show that after return from Delhi appellant was under medical supervision nor there was any evidence to establish the same. His own

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evidence shows that after taking disability certificate i.e. Ex.P/1; he was not advised by Medical Officer to take any medicines.

11) Though medical evidence was lacking yet learned Tribunal, even on assumption and presumption allowed substantial compensation to the appellant. Compensation awarded to the appellant does not suffer from any illegality or perversity. Therefore, the appeal is liable to be dismissed summarily and is accordingly dismissed *in limine*. No costs.

Sd/-
Chief Justice

Sd/-
V.K. Shrivastava
Judge

Gowri